

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

v.

CIV 16-0418 KG/KBM
CR 14-2133 KG

HECTOR SEVERIANO-BORJA,

Defendant-Movant.

**ORDER ADOPTING MAGISTRATE JUDGE'S
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

The Chief Magistrate Judge filed her Proposed Findings and Recommended Disposition (“PFRD”) on January 30, 2017 (*CV Doc. 6 & CR Doc. 94*). Judge Molzen thoroughly reviewed the record in both the criminal and civil actions and determined conclusively that Mr. Severiano-Borja is not eligible for relief pursuant to § 2255. Specifically, in the PFRD she found that

no residual clause was employed to enhance Defendant Severiano-Borja’s sentence. Instead, the prior “aggravated felony” convictions used to enhance Severiano-Borja’s sentence are drug trafficking crimes which are expressly identified as aggravated felonies under 8 U.S.C. § 1101(43)(C). Thus, there was no need to resort to the residual clause to see if the convictions otherwise qualified as crimes of violence under 8 U.S.C. § 1101(43)(F). Similarly, Defendant Severiano-Borja was sentenced as a career offender pursuant to USSG § 4B1.1 based solely on controlled substance trafficking offenses and not based on any crimes of violence. Again, no residual clause was used to enhance his sentencing guideline range.

PFRD at 2-3. On that basis, Judge Molzen recommended that I deny the §2255 Motion. The proposed findings notified the parties of their ability to file timely objections within 14 days of service, and that failure to do so waives review. To-date, Defendant-Movant

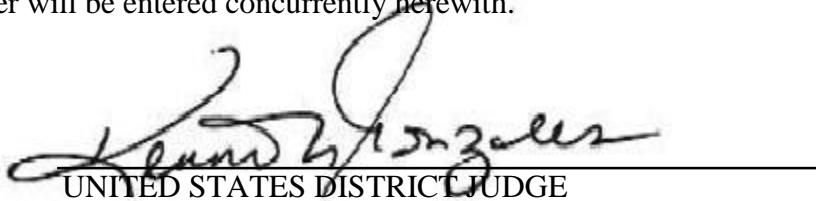
has not filed any objections, and there is nothing in the record indicating that the proposed findings were not delivered.

Moreover, the Court notes that since the entry of the PFRD, the Supreme Court entered its decision in *Beckles v. United States*, 580 U.S. ___, No. 15-8544, slip op (March 6, 2017). In *Beckles*, the Supreme Court held that the advisory United States Sentencing Guidelines, such as that challenged here, are not subject to a void-for-vagueness challenge. *Id.*, slip op at 5.

Wherefore,

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Chief Magistrate Judge's Proposed Findings and Recommended Disposition is **adopted**;
2. Mr. Severiano-Borja's motion pursuant to § 2255 is denied, and this action will be dismissed **with prejudice**; and
3. A final order will be entered concurrently herewith.



UNITED STATES DISTRICT JUDGE